IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2006

CORAM:

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

WP.No.23302/2003
WPMP.No.28778/03 & WVMP.No.2262/03

The Management of Tamil Nadu State
Transport Corporation Limited
Udhagamandalam 643 001 Petitioner

vs.

1.P.Kumaraswamy

2.The Presiding Officer, Labour Court
Coimbatore Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the award dated 9.4.2003 passed by the 2nd respondent in ID.No.525/1999 and to quash the same.

For Petitioner : Mr.Rajnish Pathiyil

For Respondents : Mr.N.Manoharan-R1

ORDER

1.The 1st respondent was originally appointed as a Conductor in the Petitioner Management and later he was promoted as a Cashier. While so, the 1st respondent collected a sum of Rs.23,000/- and Rs.15,000/- on 3.8.1998 and 20.8.1998 respectively from various Depots, but failed to deposit the said amounts with the Bank within 24 Hours. The said lapses were found on a audit conducted on 13.11.1998 and immediately, on the same day, explanation was called for from the 1st respondent and on 14.11.1998, the 1st respondent remitted the entire amount. Considering the fact that the said lapse is of serious nature, the 1st respondent was placed under suspension on 16.11.1998 by the Petitioner Management and charges were issued on 23.11.1998 stating that belatedly depositing the amounts collected is in violation of Clause 16(c) of the Standing Orders. The 1st respondent was afforded an opportunity to submit his explanation, which was also submitted by him and thereafter, an enquiry officer was appointed, who after conducting enquiry, submitted his report on 14.12.1998 and on 15.12.1998, the Petitioner issued a second show cause notice, calling upon the 1st respondent to give his

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explanation and the first respondent also submitted his explanation dated 22.12.1998 and thereafter, an order of dismissal from service was passed by the Petitioner on 30.1.1999. The 1st respondent has filed ID.No.525/1999 before the 2nd respondent/Labour Court, Coimbatore, which passed an award dated 9.4.2003, setting aside the order of dismissal of the 1st respondent and directing the Petitioner to reinstate the 1st respondent with continuity of service and without back wages. As against the said award, the Management of the Tamil Nadu State Transport Corporation Limited, Udhagamandalam has filed this Writ Petition.

2. The learned counsel for the Petitioner has submitted that admittedly the Petitioner has committed the act of temporary misappropriation, which is in violation of Clause 16(c) of the Standing Orders. The Petitioner has appointed an enquiry officer and in the enquiry conducted the 1st respondent also participated and thereafter, the enquiry officer submitted his report, stating that the charges leveled against the 1st respondent were proved and the 2nd show cause notice was also issued and the 1st respondent also sent a reply and thereafter, considering the evidence, the Petitioner has rightly passed an order of dismissal on 30.1.1999.

3. The learned counsel for the Petitioner relied upon the decision of the Supreme Court reported in 2000-7-SCC-517 (Janatha Bazar (South Kanara Central Cooperative Whole Sale Stores Limited and others Vs. Secretary, Sahakari Noukarara Sangha and others), wherein it was held as under:-

> "8. In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases."

and also relied upon the decision of the Supreme Court rendered in 2005-3-SCC-254 (Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane), wherein it was held as under:-

> "12. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that become a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the corporation's funds there is nothing wrong in the Corporation losing confidence or faith in such a person and awarding a punishment of dismissal.

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13.This court in the case of B.S.Hullikatti held in similar circumstances that the act was either dishonest or was so grossly negligent that the respondent therein was not fit to be retained as a conductor. It also held that in such cases there is no place for generously or misplaced sympathy on the part of the judicial forums and thereby interfere with the quantum of punishment."

4.The learned counsel for the 1st respondent has submitted that the 1st respondent in his explanation dated 13.11.1998 has stated that the amount was very much available in the office itself and due to ill-health of his father, he could not remit the said amount on the said dates. The 2nd respondent, considering the above said fact, has rightly modified the dismissal order and directed the Petitioner to reinstate the 1st respondent with continuity of service and without back wages and the same need not be disturbed by this court.

5.The learned counsel for the 1st respondent relied upon the decision of the Supreme Court rendered in AIR-2003-SC-1377 (Kailash Nath Gupta Vs. Enquiry Officer (R.K.Rai) Allahabad Bank and others, wherein it was held as under:-

"11. In the background or what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But, when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject matter of his removal from service. the stand of the appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the bank (which he quantified at about Rs.46,000) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service."

6.This court carefully considered the arguments of the learned counsel on either side and also perused the material records placed and the decisions referred to above.

7.It is an admitted fact that the 1st respondent has not remitted the amounts of Rs.23,000/- and Rs.15,000/- on 3.8.1998 and

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20.8.1998 respectively, but remitted the same on 14.11.1998. The reason assigned by the 2nd respondent/Labour Court for reduction of punishment is that the Petitioner has admitted his guilty and prayed for sympathy and hence, he is entitled for reinstatement.

8.It is to be remembered that the Petitioner has not remitted the said amounts on his own accord, but on audit it was found that the 1st respondent committed the said misappropriations. The reason assigned by the 1st respondent is that due to ill-health of his father, he could not remit the said amount on the said two dates, which cannot be accepted. If the said misappropriation occurred only once, of course, belated remittance due to sudden ill-health of his father could be justified to certain extent, whereas, in this case, the delay in remittance occurred twice which clearly proved the act of the "temporary misappropriation", as defined in clause 16 (c) of the standing orders of the petitioner corporation. The enquiry officer as well as the petitioner after careful perusal of evidence found that the charges against the 1st respondent were proved.

9.When the Labour Court found that there is no lapse in the disciplinary proceedings initiated by the Petitioner Management, while so it is not open to it to exercise its power to set aside the same and pass a lesser punishment. Only in cases of violation of principles of natural justice, perversity of findings, victimisation, malafide or unfair labour practice, the labour court can interfere in the punishment.

10.When the domestic enquiry is held valid by the labour court and the management also persuaded it to accept the findings of the enquiry officer as proper and correct, if the labour court differs from the conclusion arrived at by the management, it has to assign cogent reasons. In this case, the reasons assigned by the labour court for reinstating the petitioner is as follows:-

> "10/ மனுதாரர் தரப்பில் நீதிமன்றத்திற்கு உள்ள ஆள்வரையை பயன்படுத்தி மனதாரருக்கு குறைந்தபட்ச தண்டனை வழங்கப்பட வேண்டுமென்றும், மனுதாரர் செய்த தவறு காரணமாக பெரிய தண்டனையாக பணிநீக்க தண்டனை வழங்கப்பட்டிருப்பதாகவும், மனுதாரர் சுமார் 15 ஆண்டுகளாக பணியாற்றியதாகவும், இன்னமும் பல ஆண்டுகள் அவருக்கு பணிக்காலம் இருப்பதாகவும், மனுதாரர் மீது கருணை காட்ட வேண்டியது அவசியம் என்றும் கூறப்படுகிறது. மனுதாரர் நிர்வாகத்திற்கு கொடுத்த பதில் அனைத்திலுமே தன் மீது கருணை காட்ட வேண்டுமென்று கேட்டுள்ளார். அனைத்து சங்கதிகளையும் கருத்தில் கொண்டு பார்க்கும் போது மனுதாரர் மீது கருணை காட்ட வேண்டியது அவசியமாகிறது. எனவே, நிர்வாகம் மனுதாரர் மீது கருணைக்கொண்டு மனுதாரருக்கு பணித்தொடர்ச்சியுடன், பின்சம்பளமில்லாமல் மீண்டும் பணி கொடுக்க வேண்டுமென்று முடிவு செய்கிறேன்."

11.It is evident that the labour court considered the past 15 years service of the first respondent and also the fact that

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petitioner admitted all the charges and prayed for sympathetic consideration, hence, it is stated that the punishment was reduced into one of reinstatement with continuity of service without back wages. When temporary misappropriation is proved, it is unnecessary for the labour court to consider the past service of the workman. When the first respondent himself admitted the charge of misappropriation and the petitioner loses the faith in him, the sympathy need not be applied by the labour court. The said reasons assigned by the labour court for reinstating the first respondent is not a valid reason to differ from the conclusion of the management.

12. In this context, it is relevant to look into the decision of the Honourable Supreme Court rendered in (Muriadih Colliery of Bharat Cooking Coal Ltd vs. Bihar Colliery Kamgar Union vs. Bihar Colliery Kamgar Union through workmen) (2005) 3 Supreme Court Cases 331 wherein in Para Nos. 13 and 17, it was held thus:-

> 13. It is well established principle in law that in a given circumstance it is open to the Industrial Tribunal acting under Section 11-A of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment, it should bear in mind the principal of propotionality between the gravity of the offence and the stringency of the punishment. In the instant case it is the finding of the Tribunal which is not disturbed by the writ courts that the two workmen involved in this appeal along with the others formed themselves into an unlawful assembly, armed with deadly weapons, went to the office of the General Manager and assaulted him and his colleagues causing them injuries. The injuries suffered by the General Manager were caused by lathi on the head. The fact that the vicdim did not die is not a mitigating circumstance to reduce the sentence of dismissal.
>
> 17. From the facts narrated hereinabove, the ratio laid down in two cases referred to hereinabove amply aplies to the appeal in hand. The court below by condoning an act of physical violence has undermined the discipline in the organisation, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under Section 11-A of the Act to interfere with the punishment of dismissal. Substituting the order of dismissal in such a case, withholding of one increment in our opinion is wholly

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disproportionate to the gravity of misconduct and is insupportable.

ii) (M.P. Electricity Board vs. Jagdish Chandra Sharma) (2005) 3 SCC 401 wherein in para-8 it was held thus:-

> "8. The question there is, whether the interference with the punishment by the labour court was justified? In other words, the question is whether the punishment imposed was so harsh or so disproportionate to the charge proved, that it warranted or justified interference by the Labour Court? Here, it had been clearly found that the employee during work, had hit his superior officer with a tension screw on his back and on his nose leaving him with a bleeding and broken nose. It has also been found that this incident was followed by the unauthorised absence of the employee. It is in the context of those charges found established that the punishment of termination was imposed by the employee. The jurisdiction under Section 107-A of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. Similarly, the High Court gets jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charge proved. These aspects are well settled. In U.P.SRTC V. Subhash Chandra Sharma, this Court, after referring to the scope of interference with punishment under Section 11-A of the Industrial Disputes Act, held that the labour court was not justified in interfering with the order of removal from service when the charge against the employee stood proved. It was also held that the jurisdiction vested with the Labour Court to interfere with punishment was not to be exercised capriciously and arbitrarily. It was necessary, in a case where the labour Court finds the charge proved, for a conclusion to be arrived at that the punishment was shockingly disproportionate to the nature of the charge found proved, before it could interfere to reduce the punishment...."

13. In this case, the labour court condoned an act of grave charge of misappropriation and interfered with the order of dismissal from service when the charges against the first respondent stood proved. The jurisdiction of the labour court to interfere with the punishment not to be exercised capriciously and arbitrarily.

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Moreover, in a case where the charge is proved, until the conclusion arrived at by the management imposing punishment is shockingly disproportionate to the nature of charges, the labour court should not interfere to reduce the punishment.

14.For the above said reasons and also the fact that the labour court has not assigned any valid reasons to reduce the punishment imposed by the petitioner management, this Court has no other option except to set aside the award passed by the labour court and accordingly it is set aside. The punishment imposed on the first respondent by the petitioner is restored. The writ petition is allowed as prayed for. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To:

1.The Presiding Officer, Labour Court
Coimbatore.

2.The Management of Tamilnadu
State Transport Corporation Ltd.,
Udhagamandalam - 643 001.

+ one cc to Mr.Rajnish Pathiyil, Advocate Sr.No.32656.
+ one cc to Mr.N.Manokaran, Advocate Sr.No.32266.

MAB (CO)
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